

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY DeMARCO,

Plaintiff,

V.

ANDRE ROSSI, *et al.*,

Defendants.

Case No. C07-5352RJB/JKA

ORDER

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Before the court is defendant's motion for a 60-day extension of time to file dispositive motions (Dkt. # 38). This motion was filed on Aril 18, 2008, the last day for filing dispositive motions in this action. See, Scheduling Order (Dkt # 24).

Defendant's motion is unopposed and pursuant to Local Rule 7 failure to oppose the motion is considered as an admission the motion has merit. The court **GRANTS** the motion. The due date for dispositive motion is now **June 20, 2008**.

A 60-day extension of time does affect the due date for the Joint Status Report. Unless the due date for the Joint Status Report is also moved, the court and parties will be in a position where a

1 Report and Recommendation is most likely pending at the time the Joint Status Report is due. The
2 court amends the scheduling order, (Dkt # 24), as follows:

3 Motions

4 Any dispositive motion shall be filed and served on or before **June 20, 2008**. The motion
5 shall include in its caption (immediately below the title of the motion) a designation of the Friday
6 upon which the motion is to be noted upon the court's calendar. That date shall be the fourth Friday
7 following filing of the dispositive motion. All briefs and affidavits in opposition to any motion shall
8 be filed and served not later than 4:30 p.m. on the Monday immediately preceding the Friday
9 appointed for consideration of the motion. If a party fails to file and serve timely opposition to a
10 motion, the court may deem any opposition to be without merit. The party making the motion may
11 file, not later than 4:30 p.m. on the Thursday immediately preceding the Friday designated for
12 consideration of the motion, a response to the opposing party's briefs and affidavits. The documents
13 must indicate in the upper right-hand corner the name of the magistrate judge to whom the
14 documents are to be delivered.

15 If a motion for summary judgment is filed, it is important for the opposing party to note the
16 following:

17 A motion for summary judgment under Rule 56 of the Federal Rules of Civil
18 Procedure will, if granted, end your case.

19 Rule 56 tells you what you must do in order to oppose a motion for summary
20 judgment. Generally, summary judgment must be granted when there is no genuine
21 issue of material fact -- that is, if there is no real dispute about any fact that would
22 affect the result of your case, the party who asked for summary judgment is entitled
23 to judgment as a matter of law, which will end your case. When a party you are suing
24 makes a motion for summary judgment that is properly supported by declarations (or
other sworn testimony), you cannot simply rely on what your complaint says.
Instead, **you must set out specific facts in declarations, deposition, answers to
interrogatories, or authenticated documents, as provided in Rule 56(e), that
contradict the facts shown in the defendant's declarations and documents and
show that there is a genuine issue of material fact for trial. If you do not submit
your own evidence in opposition, summary judgment, if appropriate, may be
entered against you. If summary judgment is granted, your case will be
dismissed and there will be no trial.**

25 Rand v. Rowland, 154 F.3d 952, 962-963 (9th Cir. 1998)(emphasis added). Furthermore, Local
26 Rule CR 7(b)(4) states that a party's failure to file necessary documents in opposition to a motion for
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1 summary judgment may be deemed by the court to be an admission that the opposition is without
2 merit.

3 Joint Status Report

4 Counsel and *pro se* parties are directed to confer and provide the court with a joint status
5 report by no later than October 24, 2008. The joint status report shall contain the following
6 information by corresponding paragraph numbers:

- 7 1. A short and concise statement of the case, including the remaining legal and factual issues
8 to be determined at trial;
- 9 2. A narrative written statement from each party setting forth the facts that will be offered by
10 oral or written documentary evidence at trial;
- 11 3. A list of all exhibits to be offered into evidence at trial;
- 12 4. A list of the names and addresses of all the witnesses each party intends to call along with
13 a short summary of anticipated testimony of each witness.
- 14 5. Whether the parties agree to arbitration or mediation under this district's arbitration
15 program, and if so whether the arbitration will be final and conclusive or the right to trial de novo
16 will be preserved (see Local Rule CR 39.1(d));
- 17 6. Whether the case should be bifurcated by trying the liability issues before the damages
18 issues, or specially managed in any other way;
- 19 7. Any other suggestions for shortening or simplifying the trial in this case;
- 20 8. The date the case will be ready for trial, considering Local Rule CR 16 deadlines;
- 21 9. The dates on which trial counsel are unavailable and any other complications to be
22 considered in setting a trial date;
- 23 10. Whether the trial will by jury or non-jury;
- 24 11. The number of trial days required, and suggestions for shortening trial;
- 25 12. The names, addresses, and telephone numbers of all trial counsel and unrepresented (*pro
se*) parties who intend to appear at trial.

27 If the parties are unable to agree on any part of the report, they may answer in separate

1 paragraphs. **Separate reports are not to be filed.** Plaintiff's counsel (or plaintiff, if *pro se*) will be
2 responsible for initiating communications for the preparation of the joint status report.

3 Proof of Service & Sanctions

4 All motions, pretrial statements and other filings shall be accompanied by proof that such
5 documents have been served upon counsel for the opposing party (or upon any party acting *pro se*).
6 The proof shall show the day and manner of service and may be by written acknowledgment of
7 service, by certificate of a member of the bar of this court, by affidavit of the person who served the
8 papers, or by any other proof satisfactory to the court. Such proof of service shall accompany both
9 the original and duplicates filed with the Clerk. Failure to comply with the provisions of this Order
10 can result in dismissal/default judgment or other appropriate sanctions.

11 The Clerk of Court is directed to send a copy of this Order to plaintiff and to counsel for
12 defendant(s).

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14 DATED this 13th day of May, 2008.

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16
17 /s/ *J. Kelley Arnold*
18 J. Kelley Arnold
19 United States Magistrate Judge
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